WHEELER
Wealth Management

FLASH REPORT

Eric D. Wheeler, CFP®
Branch Manager, Wheeler Wealth Management
306 Middletown Park Place, Unit B · Louisville, KY 40243
P (502) 200-7225 · F (502) 473-6562

Five Big Asset Protection Planning Mistakes—and How To Avoid Them

If you have substantial assets, you may be a target for frivolous lawsuits. That's why it's so important to consider asset protection strategies that can create barriers to protect your wealth. Asset protection planning employs legally accepted concepts and strategies, as well as specific financial products, to ensure a person's wealth is not *unjustly* taken from him or her.

But asset protection can be a tricky business. Make the wrong move—knowingly or accidentally—and you can easily blow up the legal wall you're trying to build around your wealth. Here are five major mistakes that we see commonly made when the affluent engage in asset protection efforts—and how to avoid them.

Mistake #1: Starting asset protection planning after you are aware you can be sued. While there are quite a few ways to protect your wealth, they tend to be ineffectual if they're done too late. Move assets around after you are aware a claim can be made against you—into a trust, for example—and you'll learn a new vocabulary term: *fraudulent conveyance*. That strategy will likely be reversed by the courts.

There are two types of fraudulent conveyance:

- **Actual fraud** involves intent and occurs when someone transfers assets to a person they can strongly influence, resulting in not having any resources to pay creditors. Still, the person *"informally"* maintains control of the assets.
- **Constructive fraud** is about the economics of the transfer of assets, not the intent behind it. If the asset transfer was done relatively quickly when the person was in a financially distressed situation, it might be considered constructive fraud.

The way to avoid this mistake is to engage in asset protection planning as early as possible. Without question, you want to do asset protection planning *before* you need the protection.

Mistake #2: Not having enough *(or the proper)* liability insurance. Part of truly effective asset protection planning is ensuring you have the right kinds and amounts of liability insurance. Many people could, for instance, significantly benefit from larger umbrella liability policies. But often, they don't think of this. Additionally, we see that many accomplished business owners have substandard general liability coverage. A good number of these business owners might also benefit from higher-quality *(and more customized)* directors and officers liability coverage.

The good news: Liability insurance is relatively inexpensive. After avoiding lawsuits *(generally beyond your control)*, it can be considered the first line of defense in an asset protection plan. Periodically stress-testing your liability coverage *(see the next page)* is usually a smart move.

ACKNOWLEDGMENT: This article was published by the VFO Inner Circle, a global financial concierge group working with affluent individuals and families and is distributed with its permission. Copyright 2020 by AES Nation, LLC.

CLARITY AND COORDINATION

Mistake #3: Failing to approach asset protection planning in coordination with your other wealth planning efforts.
While you can engage in just asset protection planning, there can be considerable benefits if your plan takes into account the other areas such as estate planning and income tax planning. A holistic approach to wealth planning enables you to understand the trade-offs you are making—as well as any risks that you might otherwise overlook.

One example: Gifting to heirs may be a good estate planning solution in your situation, but it might also be considered a fraudulent conveyance when it comes to asset protection.

By approaching your planning as comprehensive wealth planning instead of piecemeal planning focused on one area, you will often end up with solutions that work best for you and your loved ones—and that are the most cost-effective.

Mistake #4: Not understanding what you did and why you did it. If you cannot explain the intended results of your asset protection planning and why you did what you did—at a big-picture level, at least—there is a pretty good chance your planning will not deliver the protection you seek. In legal depositions, for example, there is a strong possibility a court will become suspicious and set aside asset transfers if you cannot explain the what and why driving them.

Keep in mind that you don't need to be an expert on the strategies and financial products. However, you should be able to explain in broad terms the reasoning behind the actions taken.

Mistake #5: Failing to work with a skilled professional. Some asset protection planning professionals know just enough about asset protection strategies to get themselves—and you—into trouble. In order for you to get the optimal benefits of asset protection planning that you may seek, you need to work with a true authority in the field—for example, someone who is recognized by other financial professionals as an expert on asset protection planning.

Stress-Testing an Asset Protection Plan

If you're not sure how well your wealth is safeguarded from frivolous or unfounded lawsuits, consider stress-testing your current plan.

The first step involves determining your high-probability significant risks. What is likely to happen? And if a risk is likely to happen, how detrimental will it be to you? This can be an actuarial calculation, or—as many people do—you can make an estimate.

Next, decide how concerned you are about the risks. This may involve balancing different needs, wants and trepidations.

Then, you and an asset protection specialist should evaluate your current asset protection plan. An analysis is done, incorporating high-probability significant risks, your concerns and what you have in place to protect your wealth. Based on the outcome of this analysis, you decide on the next steps. Actions can range from not making any changes at all to making dramatic changes.

Ultimately, you want to feel confident that you have a plan in place that reflects your needs and preferences—and balances your asset protection goals with other key elements of your overall wealth plan.